IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 416 OF 2000.

Shri Laxman Gauns,
son of Goma Gauns,
major, married,
resident of House No. 367,
Achutwada, Assnora,
Bardez, Goa. ... Petitioner.

VERSUS

1. State of Goa,
   Through the Chief Secretary,
   Panaji, Goa.

2. The Chief Secretary,
   Government of Goa,
   Secretariat, Panaji, Goa.

3. Inspector General of Police,
   Government of Goa,
   with Headquarters at
   Police Headquarters,
   Panaji, Goa. ... Respondents.

Ms. Amira Razaq, Advocate for the Petitioner.

Mr. H.R. Bharne, Government Advocate for the Respondents.

CORAM: N.N. MHATRE, &
P.V. HARDAS, JJ.

DATE: 4TH MARCH, 2004.

ORAL JUDGMENT: **(PER HARDAS, J.)**

The petitioner, by this petition, impugns the Order of dismissal dated 21.07.1998 passed by the Chief Secretary, Government of Goa and the Order dated 02.01.1984 issued after holding of the inquiry declaring the petitioner as deserter and dismissing him from service.

2. The petitioner, had earlier filed a petition in this Court namely Writ Petition No.158/1992 and this Court by its Judgment dated 9th June, 1992 had set aside the appellate Order and had remitted the matter to the appellate authority for decision afresh, as the petitioner was not heard by the appellate authority. Subsequently, the appellate authority passed the Judgment in appeal, which came to be impugned again at the instance of the petitioner by filing Writ Petition No.4/1993. The Division Bench of this Court, by its Judgment dated 21st April, 1998 once again remitted the matter back to the appellate authority for disposal of the appeal in accordance with the directions issued by this Court in its Judgment dated 9th June, 1992. The appellate authority, thereafter by the order impugned in the present Petition which is at Exh.A to the petition, confirmed the Order of dismissal passed by the Inspector General of Police, Government of Goa, dismissing the petitioner from service.

3. The petitioner came to be appointed as Police Constable somewhere in the year 1996. Since the petitioner was habitually absent, particularly from 29.04.1982 to 30.04.1982 and from 05.05.1982 till 02.06.1982, which period of unauthorised absence was more than 21 days, the authorities proposed that the

petitioner be declared as a Deserter. Accordingly, a charge sheet came to be issued to the petitioner which was duly received by him. The petitioner was called upon to submit his written statement. However, the petitioner omitted to do so. According to the petitioner he attended the inquiry on 7th May, 1982 and requested the Inquiry Officer to adjourn the inquiry to a suitable date. However, the Inquiry Officer fixed the inquiry on 8th May, 1982. Thereafter, according to the petitioner, for reasons beyond his control, he could not participate in the inquiry. It is the principal contention in the petition that the charge-sheet had not been served to him and he had not been intimated of the various dates on which the inquiry was conducted and therefore the petitioner could not participate in the inquiry. It is thus contended before us that the petitioner has been denied a reasonable opportunity of participating in the inquiry and defending himself.

4. Though the respondents have not filed their return, Mr. Bharne, the learned Government Advocate, appearing on behalf of the respondents, has produced the relevant record for our perusal. From the perusal of the relevant record, it is apparent that the petitioner had been served with the charge-sheet

which is duly acknowledged by him under his own signature. Thereafter various intimations have been sent to the petitioner, some of which have been acknowledged by him, while some intimations though he has been informed, have not been acknowledged by him. The record however reveals that even a wireless message was sent to him, intimating him about the date of the inquiry, which was read over to him and despite the wireless message being read over to him, the petitioner did not attend the inquiry. In that background, therefore, the report of the Inquiry Officer was also forwarded to the petitioner, which he refused to accept, as is evident from the endorsement of the Police Constable No.2979 dated 03.08.1983.

5. It appears that thereafter the Petitioner was served with the Order on 21.11.1989 and accordingly the petitioner challenged the order before the Appellate Authority. As stated by us, in the earlier part of the Judgment, this Court had twice remitted the matter back to the appellate authority for decision afresh.

6. We have perused the Order of the appellate authority. The appellate authority has examined whether the petitioner was given adequate and

reasonable opportunity of defending himself in the inquiry and has, after perusal of the record, found that the petitioner had been granted opportunity of defending himself which the petitioner did not avail of. We endorse the finding of the learned appellate authority, as the reasons of the appellate authority being borne out from the perusal of the record and we thus find that there is no merit in the challenge to the inquiry which was conducted. The petitioner had been given reasonable opportunity of defending himself. There is no breach of the principle of natural justice in the conduct of the inquiry. This Court cannot sit as an appellate authority and examine and appreciate the evidence to come to the conclusion whether the charges levelled against the petitioner have been proved.

7. It is next submitted on behalf of the petitioner by Ms. Amira Razaq, learned counsel for the petitioner, that the punishment of dismissal is grossly disproportionate to the charges levelled against the petitioner. According to the learned counsel, the petitioner had been absconding or was under unauthorised absence only for a period of 21 days or so and therefore according to her, the punishment which ought to have been imposed on the petitioner would be of compulsory retirement, rather

than the punishment of dismissal from service.

8. Learned counsel for the petitioner has placed reliance on the Judgment of the Supreme Court in the case of **State of Punjab and others v. Dharam Singh** reported in A.I.R. 1997 S.C., 1905. The Apex Court in this case found that the respondent therein had been removed from service on the ground of absence from duty and the absence was for non-payment of subsistence allowance during the period of suspension. The Apex Court therefore in those facts, found that the punishment of removal was harsh and the punishment of compulsory retirement from service would be an appropriate punishment. According to us the ratio of the aforesaid judgment is inapplicable to the facts of the present case.

9. The petitioner was an Armed Police Constable who had remained absent from duty without either the permission of the superiors and without obtaining leave. Unauthorised absence of the petitioner led to the institution of the inquiry against him. For reasons which are wholly unsustainable, the petitioner did not participate in the inquiry. Therefore, in the present facts of the case, we find that no ground has been made out to hold that the punishment of dismissal is disproportionate to the

charges proved against the petitioner.

10. In the result, therefore, we do not find any merit in the present Petition and the same is dismissed. Rule discharged with no order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

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